Paragon Systems, Inc. *and* Federal Contract Guards of America (FCGOA) International Union. Case 05–CA–116070

August 18, 2015

DECISION AND ORDER

BY MEMBERS MISCIMARRA, JOHNSON, AND MCFERRAN

On May 8, 2014, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The General Counsel alleges that the Respondent, a successor employer under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), violated Section 8(a)(5) and (1) of the Act when it unilaterally reduced the amount of paid "guard mount" time from the 30 minutes per shift afforded by its predecessor to 10 minutes per shift. The judge dismissed the complaint, finding that the Respondent lawfully implemented the reduction as part of its initial terms and conditions of employment. For the reasons set forth below, we agree and affirm.

Facts

Prior to October 1, 2013, the Respondent's predecessor, MVM, provided contract guard services at the Immigration and Customs Enforcement (ICE) Headquarters in Washington, D.C. MVM's employees were represented by the Charging Party Union, and MVM and the Union were parties to a collective-bargaining agreement. In October 2012, the Respondent was awarded the contract to furnish guard services at ICE Headquarters and two other Washington facilities. The Respondent held a series of job fairs, including one at ICE Headquarters in September 2013, for MVM's incumbent employees, and it also placed ads on the Internet. Applicants were told they had to read and fill out a job application. The application form stated, among other things, that (1) if hired, the applicant would need to conform to the Respondent's policies, practices, and procedures, and would be employed at will; and (2) the Respondent retained the right to establish and modify compensation, benefits, and working conditions, and to modify employees' positions and duties. Incumbent employees were also given a "contingent offer of employment" letter stating, among other things, that "shift schedules [would] be determined in accordance with the operational needs of the contract, with consideration given to employee seniority."

The Respondent commenced operations at ICE Headquarters October 1, 2013.[2] At that time, more than half of its employees at ICE Headquarters were former MVM employees represented by the Union. The Union having previously requested recognition, the Respondent recognized the Union as the guards' exclusive collective-bargaining representative, and the parties commenced bargaining in November.

Guards at ICE Headquarters begin their shifts by assembling at a central area where they are issued weapons and ammunition and informed of any special orders for the day. At the end of the shift, the guards return to the central area and surrender their weapons. The time spent on these tasks is termed "guard mount time." Under MVM's collective-bargaining agreement with the Union, guard mount time was considered "time worked." MVM paid employees for 30 minutes of guard mount time per shift—20 minutes at the start of the shift and 10 minutes at the end. Union President Guy James testified that guard mount time was part of the shift. Upon commencing operations on October 1, the Respondent implemented a shift schedule that included 10 minutes of paid guard mount time (or, as the Respondent calls it, "gear-up" and "gear-down" time) per shift, 5 minutes at the start of the shift and 5 minutes at the end.[3] It also discontinued MVM's practice of paying for guard mount time on weekends.

[1] There are no exceptions to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally discontinuing uniform allowances.

[2] All dates are in 2013 unless otherwise noted.

[3] The judge found that the Respondent implemented 5-minute gear-up and gear-down periods on October 1. The General Counsel excepts, contending that this change was made sometime after October 1. However, the evidence the General Counsel cites in support of that contention fails to support it. First, the General Counsel cites page 95 of the hearing transcript. The testimony on that page, by Respondent's vice president of operations, Grady Baker, is to the effect that the duration of gear-up and gear-down periods had not been determined *as of September 18*. Second, the General Counsel cites R.Exh. 8. That exhibit is an email exchange *on September 18* between Respondent's payroll anager, Jill Patterson and rogram manager, Rick Waddell. Patterson asks Waddell if there will be "guard mount" at ICE Headquarters "and if so, what are the times before and after?" Waddell replies that "[t]hey are currently [i.e., under MVM] running 20 prior and 10 after," and adds: "I have to discuss this with Grady and I expect changes." This evidence shows that guard mount time remained an open issue as of September 18. The General Counsel points to no evidence that the Respondent implemented 5-minute guard mount periods after October 1.

Discussion

A "successor" employer under *NLRB v. Burns Security Services*, supra, and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), is free to set initial employment terms without first bargaining with an incumbent union, unless "it is *perfectly clear* that the new employer plans to retain all of the employees in the unit," in which case "it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms." *Burns*, supra at 294–295.[4] Once a *Burns* successor has set initial terms and conditions of employment, however, a bargaining obligation attaches with respect to any subsequent changes to terms and conditions of employment. E.g., *Bronx Health Plan*, 326 NLRB 810, 813 (1998), enfd. mem. per curiam 203 F.3d 51 (D.C. Cir. 1999). Accordingly, a successor violates Section 8(a)(5) if, after setting initial terms, it unilaterally changes a term or condition of employment. Id.

It is undisputed that the Respondent was a successor employer to MVM under *Burns*, supra. It is also undisputed that the Respondent was not a "perfectly clear" successor and that it was privileged to set initial terms and conditions of employment when it commenced operations at ICE Headquarters on October 1. Finally, the judge found that the Respondent implemented 5-minute guard mount periods when it commenced operations on October 1, and the record fails to support the General Counsel's contention that 5-minute guard mount periods were implemented sometime after October 1 (see above fn. 3). Applying the legal principles set forth above to the facts of this case, we find that the Respondent did not violate Section 8(a)(5) when it implemented 5-minute guard mount periods as part of its initial terms and conditions of employment.

The General Counsel contends, however, that the Respondent did violate Section 8(a)(5) when it implemented the 5-minute periods because it did not sufficiently notify employees of that change before commencing operations on October 1. We disagree. As noted above, the Respondent announced prior to the takeover that it had the right to establish compensation, benefits, and working conditions. Its job application forms disclosed that employees would need to conform to its policies, practices, and procedures. And it specifically informed prospective employees that "shift schedules [would] be determined in accordance with the operational needs of the contract, with consideration given to employee seniority" (and as noted above, guard mount time is part of the shift). Taken together, these statements made clear to MVM's employees that the Respondent was not adopting MVM's practice regarding paid guard mount time. See *301 Holdings, LLC*, 340 NLRB 366, 367, 368 fn. 15 (2003) (successor sufficiently informed predecessor's employees that work schedules would change when it directed employees to rearrange their work schedules to cover weekends). Moreover, as stated above, the Respondent implemented 5-minute paid guard mount periods on the first day it assumed operations at ICE. Doing so was not an unlawful change, but part and parcel of the Respondent's initial terms and conditions of employment.

Our dissenting colleague acknowledges that the Respondent exercised its right to set initial terms and conditions of employment, and she agrees that the Respondent implemented its 10-minute paid guard mount time policy "upon commencing operations." Nevertheless, the dissent concludes that the implementation of this policy was unlawful, essentially because the Respondent did not provide sufficiently explicit notice of it. In this regard, our colleague construes the Respondent's announcement regarding shift schedules as limited to the assignment of shifts because the second part of the sentence states "consideration [will be] given to employee seniority."

We respectfully disagree. Although the Respondent's announcement of initial terms did not specifically mention guard mount time in so many words, the reference to "shift schedules" reasonably encompasses guard mount time as explained above. For several reasons, we believe the reference to seniority does not mean that the entire sentence about "shift schedules" only deals with shift assignments. First, the record includes evidence that the Union itself considered guard mount time to be part of the shift. Second, our colleague's interpretation minimizes the Respondent's primary point that "shift schedules" will be based on "operational needs," which would predictably affect several seniority-neutral aspects of shift schedules--such as the number of shifts, when shifts begin and end, the duration of postings within a shift, and the amount of transition time (guard mount time) at the beginning and end of each shift--in addition to particular shift or job assignments. Third, the record reveals an independent basis for the Respondent's reference to the role to be played by seniority. In this regard, the predecessor's collective-bargaining agreement made seniority

[4] The Board interpreted the "perfectly clear" exception to the rule of *Burns* in *Spruce Up Corp.*, 209 NLRB 194 (1974), enfd. 529 F.2d 516 (4th Cir. 1975). There, the Board held that the exception is to be "restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours, or conditions of employment," or "where the new employer has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment." 209 NLRB at 195.

"applicable in *determining* . . . job assignments,"[5] which contrasts with the Respondent's more limited statement that seniority would receive "consideration" in such assignments. Thus, the Respondent's announcements regarding "shift schedules" generally and the "consideration" of seniority *both* reasonably portended changes in employment terms, and we do not interpret the first part of the Respondent's announcement regarding "operational needs" as limited to changes in employment terms potentially affected by seniority. Under all of these circumstances, we find that the General Counsel has failed to establish that the Respondent unlawfully changed terms and conditions of employment.

Cases cited by the General Counsel in support of finding a violation are distinguishable from this case.

First, in *301 Holdings*, supra, the successor told the predecessor's employees of one specific change—to work schedules—and then proceeded to reduce wages and discontinue benefits. The Board found that by telling prospective employees their work schedules would change, the successor "implicitly [told] them that all other terms and conditions would remain the same." 340 NLRB at 368. Under those circumstances, the Board found the wage and benefit cuts to be changes unlawfully made *after* the setting of initial terms. Id. Here, by contrast, the Respondent did not tell MVM's employees, either implicitly or expressly, that shift schedules (which include paid guard mount time) would remain the same. To the contrary, it told them that "shift schedules [would] be determined in accordance with the operational needs of the contract," and it also told them that employee seniority would only receive "consideration" where the predecessor had made seniority the determining factor.

Second, unlike in this case, in *Windsor Convalescent Center of North Long Beach*[6] the Board found the successor employer to be a "perfectly clear" successor not entitled to set initial terms and conditions. 351 NLRB at 980. There, the successor employer issued its employee handbook and implemented terms and conditions of employment 8 days after beginning operations. The Board indicated that, even assuming the employer was privileged to set initial terms, its pretakeover announcement that "[o]ther terms and conditions of your employment will be set forth in Windsor's personnel policies and its employee handbook" would have been insufficient to establish the subsequently issued handbook as part of its lawfully established initial terms. Id. at 982. Instead, the issuance of the handbook unilaterally changed the terms and conditions of employment in place at the time of the takeover. Here, unlike in *Windsor Convalescent Center*, the Respondent specifically identified shift schedules as a term of employment subject to change at the time it offered employment to MVM's employees. Moreover, the Respondent implemented the change in paid guard mount time when it commenced operations on October 1—not, as in *Windsor Convalescent Center*, several days later.[7]

Finally, *Banknote Corp. of America*,[8] also cited by the General Counsel, is easily distinguished. There, the *Burns* successor commenced operations on April 19, 1990. The bargaining obligation attached on that date. On April 23, the successor unlawfully changed terms and conditions of employment. Here, by contrast, the Respondent lawfully implemented the new guard mount times as part of its initial terms.

For the reasons set forth above, we agree with the judge that the complaint must be dismissed.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. August 18, 2015

Philip A. Miscimarra, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

My colleagues find that the Respondent, an undisputed *Burns*[1] successor (but not a "perfectly clear" successor), did not violate Section 8(a)(5) and (1) of the Act by unilaterally reducing employees' paid "guard mount time" upon commencing operations at the Immigration and Customs Enforcement Headquarters. On the facts here, I disagree. Although the Respondent was free to set initial terms and conditions of employment, the evidence shows

[5] Art. 21, Sec. 1 of the 2011–2014 FCGOA-MVM collective-bargaining agreement (emphasis added).

[6] 351 NLRB 975 (2007), enf. denied in relevant part sub nom. *S & F Market Street Healthcare LLC v. NLRB*, 570 F.3d 354 (D.C. Cir. 2009).

[7] Members Miscimarra and Johnson agree that *Windsor Convalescent Center* is distinguishable. Accordingly, they do not pass on whether it was correctly decided.

[8] 315 NLRB 1041 (1994), enfd. 84 F.3d 637 (2d Cir. 1996), cert. denied 519 U.S. 1109 (1997).

[1] *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972).

that the reduction in paid guard mount time was *not* among them.

I.

Under the predecessor's collective-bargaining agreement, guard mount time was paid as time worked, and the predecessor had a practice of paying for 30 minutes of guard mount time per shift. After the Respondent succeeded to the predecessor's contract, but before commencing operations, the Respondent solicited applications from both incumbent employees and others. The application form stated generally that: (1) if hired, the applicant would need to conform to the Respondent's policies, practices, and procedures; and (2) the Respondent retained the right to establish and modify compensation, benefits, and working conditions. The application did not specifically mention guard mount time.

The Respondent also gave successful applicants a "contingent offer of employment" letter explaining, in considerable detail, employees' base pay rates, the Respondent's contributions to their health and pension benefits, paid holidays, paid vacation accrual, and paid sick and personal leave. The same letter stated that "[s]hift schedules will be determined in accordance with the operational needs of the contract, with consideration given to employee seniority." No provision of the letter, however, specifically addressed guard mount time. Nor was that subject mentioned in the handbook the Respondent distributed to newly hired employees at their orientation.

Upon commencing operations, the Respondent began paying employees for 10 minutes of guard mount time per shift rather than the previously established 30 minutes per shift. It is undisputed that the Respondent did not give the Union or employees actual notice of this change; instead, employees learned of the change when they received their first paycheck.

II.

The majority's view that the reduction in paid guard mount time is properly treated as an initial term and condition (and not as an unlawful, unilateral change) rests on two grounds: (1) the Respondent's application form, which generally reserved its right to establish and modify compensation, benefits, and other terms and conditions of employment; and (2) the "contingent offer of employment" letter, which stated in part that "[s]hift schedules will be determined in accordance with the operational needs of the contract." My colleagues assign those documents more weight than they can bear.

To be sure, the application form recited the Respondent's general right to determine employees' compensation, benefits, and other terms and conditions of employment. But the mere existence of that right--the Respondent's basic right as a *Burns* successor to set initial terms--is not the issue here. Rather, the question is whether the Respondent successfully exercised that right with respect to paid guard mount time. And nothing in the application speaks to that subject.

Moreover, even accepting that the application was worded broadly enough to potentially sweep in changes to paid guard mount time, the more specific "contingent offer of employment" letter reasonably would have led the Union and employees to conclude that no such changes would be made. As described, the letter provided detailed information about what employees should expect in terms of wage rates, health and pension benefits, paid holidays, paid vacation accrual, and paid sick and personal leave. By specifically addressing those particular terms and conditions of employment, while remaining silent about paid guard mount time, the offer letter reasonably conveyed that changes to the latter were not in the offing. See, e.g., *301 Holdings, LLC*, 340 NLRB 366, 367 (2003) (employer announced scheduling changes, but not changes to wages and benefits, making its unilateral action on those subject unlawful).[2]

Nor am I persuaded by my colleagues' reliance on language in the offer letter stating that "shift schedules will be determined in accordance with the operational needs of the contract." My colleagues reason that, because the Union considered paid guard mount time part of a scheduled shift, this language informed employees that guard mount time would not remain the same. This reasoning, however, fails to account for the full context of the relevant portion of the offer letter. In full, the relevant language reads as follows: "[s]hift schedules will be determined in accordance with the operational needs of the contract, *with consideration given to employee seniority*" (emphasis added). The italicized clause clearly indicates that this language was speaking to the assignment of shifts, e.g., days of the week and/or day shift versus night shift, decisions traditionally informed by employees' seniority. By contrast, paid guard mount time was seniority-neutral, making it difficult to see how this language would have caused the Union and employees to expect changes to guard mount time. Moreover, guard mount time was built into each shift, not scheduled in the way that individual assignments or overtime, for example, would be. The Respondent's language focusing on scheduling changes would not have alerted the Union or

[2] The majority effectively would limit *301 Holdings*, supra, to its particular facts. In my view, when a *Burns* successor announces a limited number of specific changes from the predecessor's terms and conditions of employment, it is those changes that define the permissible setting of different initial terms: employees are entitled to conclude that all other terms will remain the same.

employees to a change in something as structural as guard mount time.

My colleagues observe that the predecessor's agreement made seniority "applicable" in determining job assignments, but that the Respondent chose only to give seniority "consideration" in that determination. In the majority's view, this means that the rest of the announcement reasonably pointed to changes in employment terms generally, not just those governed by seniority. That reading, however, takes the relevant language out of context. In any case, the majority's intricate and debatable parsing of the Respondent's announcement only serves to illustrate its lack of clarity from an employee's perspective--which is what matters here.

In sum, although the Respondent gave notice that it would implement certain terms and conditions of employment that differed from its predecessor, a different amount of paid guard mount time was not among them. Moreover, the terms and conditions that were enumerated for change were not of the sort that would put employees on notice that a change to the amount of paid guard mount time was contemplated or intended.[3] Under the circumstances here, I conclude that the previously established 30 minutes of paid guard mount time continued as part of the employees' terms and conditions of employment, and could no longer be changed unilaterally by the Respondent. See *301 Holdings, LLC*, above, 340 NLRB at 367. As the Supreme Court has recognized, the transition from one employer to another can be "unsettling" for both unions and employees, with the resulting uncertainties being "not conducive to industrial peace." See *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 39–40 (1987). Those risks are only exacerbated when, as in this case, employees are unfairly surprised by unannounced changes to their working conditions.

For those reasons, I respectfully dissent.

Dated, Washington, D.C. August 18, 2015

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD

Katrina Woodcock, Esq., for the General Counsel.
Thomas P. Dowd, Esq. (Littler Mendelson, Washington, D.C.), for the Respondent.

[3] Indeed, the Respondent's change was not apparent to employees until they received their first paychecks--too late, in my view, to permit the change to be treated as an initial term and condition of employment.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Washington, D.C., on March 31, 2014. The Union, Federal Contract Guards of America (FCGOA), filed the charge on October 31, 2013. The General Counsel issued the complaint on January 30, 2014.[1]

Respondent, Paragon Systems, Inc. provides security services under contract to various agencies of the United States Government, as well as to nongovernmental institutions. This matter involves Paragon's contract at the Immigration Control and Customs Enforcement (ICE) Headquarters at 500 12th St. S.W., Washington, D.C. Prior to October 1, 2013, MVM provided security services at ICE headquarters. MVM had a collective-bargaining agreement with the Charging Party Union whose term was from January 14, 2011, to January 13, 2014.

The General Counsel alleges that Respondent Paragon violated Section 8(a)(5) and (1) of the Act by reducing the amount of paid "guard mount" time from that for which MVM paid. The General Counsel also alleges that Respondent violated Section 8(a)(5) and (1) by failing to pay unit employees a uniform allowance of 17 cents per hour that was paid by MVM and was specifically called for in MVM's collective-bargaining agreement. After reviewing the record and considering the parties' briefs, I make the following:

FINDINGS OF FACT

The Federal Protective Service, a component of the Department of Homeland Security, awarded Paragon Systems the contract to provide security services at 3 government installations in October 2012. Its contract at the Old Post Office Building commenced on January 1, 2013. The contract at EPA Headquarters began on June 1, 2013. Its contract at the ICE headquarters commenced on October 1, 2013. Respondent held jobs fairs in November 2012, at the Old Post Office, April 2013 at the EPA Headquarters and September 2013 at the ICE headquarters. Although only the last was aimed at guards working for MVM at the ICE headquarters, they were welcomed at the earlier job fairs. Paragon also solicited applications from nonincumbents through Monster.com.

On November 11, 2012, George Shaw, a guard working for MVM at the ICE headquarters signed a conditional offer of employment letter with Paragon. That letter contained an Appendix setting forth benefits which included the 17 cents an hour uniform allowance (Exh. R–2). On April 5, 2013, Andrew Durand, another MVM guard at ICE signed what appears to be an identical letter—with one exception. The Appendix attached to Durand's letter indicated that there would be no uniform allowance for Paragon guards at ICE (GC Exh. 5).[2]

[1] At the hearing I left the record open while the General Counsel decided whether or not to go to complaint on charge number 05–CA–125033. After 5 weeks, no decision has apparently been made, thus I hereby close the record in this matter. Whether the General Counsel is precluded from litigating this new charge by issuing a new complaint is not before me.

[2] According to GC Exh. 10, Paragon hired Shaw and Durand on September 17, 2013.

Both the employment application filled out by incumbent guards and the letter offering them employment stated that employment by Paragon would be "at will." The application form stated that Respondent had the right to establish compensation, benefits and working conditions. The offer letter stated that shift schedules would be determined in accordance with the operational needs of the contract. Neither document specifically addressed the subjects of paid "guard mount" time or, other than in the Appendix, a uniform allowance.

On September 25, 2013, Paragon held a mandatory new hire orientation at the ICE building. At this meeting Respondent distributed a Security Officer Handbook, which addressed uniforms and appearance at pages 24–25 (Exh. R–6, Exh. R–5). The Handbook stated that guards, who were provided uniforms that required dry cleaning, would be reimbursed for dry cleaning expenses. This also implicitly conveys the fact that there will be no reimbursement or allowance for the cleaning of the wash and wear uniforms issued to the ICE guards.

Respondent's handbook (R–6, p. 26), states that Paragon guards may not wear their uniform while off-duty except when traveling to and from their assigned post. Guards may not enter places in which alcoholic beverages are served while in uniform unless assigned to such an establishment while on duty.

On October 1, 2013, Paragon's bargaining unit of guards at ICE consisted of about 60 employees. More than half were holdovers from the MVM bargaining unit. Thus, Paragon, as a successor employer, recognized the Union as the exclusive bargaining representative of its guards at ICE on that date. Bargaining for an initial contract began in November 2013.

At least by the time they received their first paycheck, unit employees became aware of two changes in their compensation. First, they were paid for 5 minutes of "gear up" time prior to arriving at their guard post and 5 minutes of "gear down" time after leaving their post. This amount is paid in addition to that paid for performing guarding functions. The established practice of the prior contractor, MVM, was to pay for 20 minutes of "guard mount" time prior the guard assuming his or her post and 10 minutes of "gear down" time after leaving his or her post. MVM also paid for guard mount time on weekends, which Paragon does not.

The contract between MVM and the Union merely specified that when the employer required a gear up and gear down period prior to and after a normal work shift, the time spent in such activities would be considered as time worked (Exh. R–1, p. 10, Sec. 8). The 20/10 minute periods became an established practice during MVM's tenure, first via a verbal agreement and later pursuant to an arbitrator's award.

Upon receiving their first paycheck, unit employees at ICE also discovered that they were not receiving a uniform allowance from Paragon. MVM paid unit employees a uniform allowance of 17 cents per hour (GC 3, p. 27), Appendix A. Guards at ICE are allowed to either drive to work in their uniforms or to change into them when they arrive at the ICE building.

There was conflicting testimony as to what transpires during the gear up or guard mount period at ICE. The General Counsel's witnesses testified that the procedure has not changed since Paragon replaced MVM and that its still took 20 minutes to "gear up" or go through the guard mount. Grady Baker, Respondent's vice-president of operations, testified that there isn't a formal "guard mount" at ICE and that the "gear up," which consists of little more than drawing a weapon and walking to an assigned post takes no more than 5 minutes. Since Baker appears to have little firsthand knowledge of actual practice at ICE, I do not credit his testimony.[3]

Therefore, I credit the testimony of guards Andrew Durand and George Shaw that there has been no material change to procedures at ICE just prior to assuming a guard post. I find therefore that these procedures, regardless of whether they are called "gear up," roll call or "guard mount," take about 20 minutes.[4]

There is no dispute as to the fact Respondent did not give the Union or unit employees any specific prior notice before eliminating the uniform allowance that MVM paid or changing the amount of time paid for "gear up, gear down." Respondent made these changes upon starting operations at ICE on October 1, 2013, although the Union and unit employees did not become aware of the changes until several weeks later.[5]

Analysis[6]

An employer, which takes over the unionized business of another employer, succeeds to the collective-bargaining obligations of that employer if it is a successor employer. For it to be a successor employer, the similarities between the two operations must manifest a "substantial continuity between the enterprises" and a majority of its employees in an appropriate bargaining unit must be former bargaining unit employees of the predecessor. The bargaining obligation of a successor employer begins when it has hired a "substantial and representative complement" of its work force. *NLRB v. Burns Security Services,* 406 U.S. 272 (1972), *Fall River Dyeing & Finishing Corp. v. NLRB,* 482 U.S. 27 (1987). There is no dispute in this case that Paragon became a successor employer of MVM at the ICE headquarters on October 1, 2013.

The issue in this case is how specific a successor employer must be in informing employees of its predecessor about the changes in the terms and conditions of their employment. Respondent certainly did nothing to lead employees to believe that they would be compensated in accordance with the Union's collective-bargaining agreement with MVM.

The General Counsel does not allege that Respondent is a

[3] Baker has observed the roll call at ICE only once, Tr. 111–112.

[4] While I realize that nobody has been conscripted in the United States in 40 years, I will hazard the following reference. I envisage a "guard mount" to be similar to my experiences in formation at Fort Dix, New Jersey in 1969. This included inspection of one's uniform (with particular attention to the shine of one's boots, belt buckle and the adequacy of one's shave). Officer Durand also testified to some time consuming procedures for safely loading the weapons issued to the guards each day.

[5] There were, however, rumors that Paragon would depart from MVM's practice with regard to guard mount time. A supervisor for MVM, who apparently is a supervisor for Paragon, told some guards in September 2013, that Paragon planned to reduce the amount of paid guard mount time.

[6] The parties agree that Respondent's compliance with the Fair Labor Standards Act and/or the Service Contract Act is not before me.

"perfectly clear" successor. Thus, Respondent was privileged to set initial terms and conditions of employment, *Spruce Up Corp.,* 209 NLRB 194 (1974). However, at page 17 of its brief, the General Counsel argues that Respondent changed those initial terms. As a factual matter, I conclude this is not so. Respondent never told prospective employees that they would be paid for 30 minutes of guard mount time and never did so. It apparently determined that a guard mount was not required at ICE between September 18 and 30, 2013 (Exh. R–8).

Other than George Shaw, there is no evidence that any employee was told they would be receiving a uniform allowance. Moreover, the handbook distributed on September 25 implicitly indicated that employees would not receive a uniform allowance. Guards at ICE never received such an allowance.

I conclude that under controlling precedent, *Spruce Up* and *Burns,* that Respondent did not forfeit its right to set initial terms of employment by failing to specify all the changes that would be implemented upon its taking over the ICE contract on October 1, 2013. Respondent did not mislead employees in believing that they were accepting employment with Paragon under the terms and conditions set forth in the Union's collective-bargaining agreement with MVM. Indeed, it made it clear to employees that there would be changes, which went into effect on day 1 of Paragon's contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The complaint is dismissed.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.